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October 14, 2010

VIA COURIER

Christopher Hughey
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 6377—Response of Danny Tarkanian and Harry Reid Votes

Dear Mr. Hughey:

In an effort to silence damaging criticism of its most prominent member, the Nevada State Democratic Party ("NSDP") recently filed a meritless complaint against two vocal opponents of U.S. Senator Harry Reid—former Nevada Republican U.S. Senate candidate Danny Tarkanian¹ and Harry Reid Votes ("HRV"), a political organization registered with the Internal Revenue Service.²

The complaint contends that: (1) HRV made excessive in-kind contributions to U.S. Senate candidate Sharron Angle; (2) HRV's name somehow violates Commission rules; and (3) HRV's radio advertisement lacked identifying information. Each of these claims is false and each is rebutted in the paragraphs below.

¹ Declaration of Daniel J. Tarkanian at ¶2.

² Harry Reid Votes, IRS Form 8871 Registration, available at <http://forms.irs.gov/politicalOrgsSearch/search/Print.action?formId=54753&formType=E71>.

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I. ARGUMENT

A. HRV Has Not Made Any In-kind Contributions to Sharron Angle's Campaign

The NSDP's initial assertion is that HRV made an excessive in-kind contribution to the Angle Campaign by sponsoring a "coordinated communication."³ This assertion fails, though, because Mr. Tarkanian is not an agent of the Angle Campaign and because the Commission's "conduct standards" have not otherwise been met.

While it is true that a campaign agent's involvement can transform an independent group's advertising into an in-kind contribution,⁴ NSDP stretches the term "agent" beyond its regulatory definition and past any logical interpretation. NSDP believes that Mr. Tarkanian is a campaign "agent" because he "campaign[ed] for the Republican Party," "joined volunteers" at an Angle Campaign phone bank, and appeared as a guest speaker at one "Gun Rights Night" event.⁵ But Commission regulations do not set such a low bar to attain "agent" status:

For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, to engage in any of the following activities on behalf of the specified persons...

(b) In the case of an individual who is a Federal candidate or an individual holding Federal office, any one or more of the activities listed in paragraphs (b)(1) through (b)(6) of this section:

(1) To request or suggest that a communication be created, produced, or distributed.

(2) To make or authorize a communication that meets one or more of the content standards set forth in 11 CFR 109.21(c).

(3) To request or suggest that any other person create, produce, or distribute any communication.

(4) To be materially involved in decisions regarding: (i) The content of the communication; (ii) The intended audience for the communication; (iii) The means or mode of the communication;

³ Complaint at 3-5.

⁴ 11 C.F.R. § 109.21(d).

⁵ Complaint at 2.

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(iv) The specific media outlet used for the communication; (v) The timing or frequency of the communication; (vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(5) To provide material or information to assist another person in the creation, production, or distribution of any communication.

(6) To make or direct a communication that is created, produced, or distributed with the use of material or information derived from a substantial discussion about the communication with a different candidate.⁶

Thus, joining volunteers at a phone bank or serving as a guest speaker does not make one an "agent." For Mr. Tarkanian to be a campaign "agent," such that HRV's advertisements would be "coordinated communications," he must possess actual authority to represent the Angle Campaign in the above-listed activities. Mr. Tarkanian, however, has not and does not possess this authority.⁷ Indeed, even the NSDP would likely concede that it is improbable the Angle Campaign would deputize its nearest opponent to authorize communications and conduct similar important activities on the Campaign's behalf.

Sensing the thinness of its "coordination" case, NSDP then blurts that "through Tarkanian and other individuals, Angle or her campaign have probably requested or suggested that HRV create its ads ... or otherwise coordinated their activities."⁸ NSDP does not offer any facts to support its claim because no such proof exists. Mr. Tarkanian and HRV have not interacted with the Angle Campaign in a manner that meets the Commission's "conduct" standards.⁹

Because HRV has not sponsored any "coordinated communications," it has not made an in-kind contribution to the Angle Campaign and NSDP's initial assertion is false.

⁶ 11 C.F.R. § 109.3.

⁷ Declaration of Daniel J. Tarkanian at ¶¶5-6.

⁸ Complaint at 5.

⁹ 11 C.F.R. § 109.21(d); Declaration of Daniel J. Tarkanian at ¶7-9.

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B. HRV's Use of Senator Harry Reid's Name is Not Prohibited by Commission Rules

NSDP's second false claim is that HRV's name violates Commission regulations,¹⁰ which provide that "no unauthorized committee shall include the name of any candidate in its name."¹¹ By its own terms, this naming rule does not apply to HRV because HRV is not a federal "committee."¹² Even if HRV somehow fell within this rule's scope, its name would be lawful. The possibility of "confusion" and "abuse" that animated the Commission to promulgate these committee-naming rules is not present here.¹³ All materials that feature HRV's name "clearly and unambiguously show opposition" to candidates like Senator Harry Reid and make plain that HRV combats policies those candidates would enact.¹⁴ Like the complaint's other claims, then, the allegation about HRV's name is unfounded.

C. HRV's Disclaimer Does Not Violate Commission Rules

Finally, NSDP wrongly argues that HRV's radio advertisement lacked sufficient information to identify its sponsor.¹⁵ Even assuming that the Commission's disclaimer rules applied to this advertisement,¹⁶ any deficiency was both immaterial and inadvertent. The ad announced HRV's website address and contained an express statement that "Harry Reid Votes is responsible for the content of this advertising."¹⁷ This information was adequate for the public, including NSDP, to easily identify HRV as the ad's sponsor. HRV did not intentionally omit any information, and will endeavor to include any other identifying statements in future advertisements.

¹⁰ Complaint at 5-6.

¹¹ 11 C.F.R. § 102.14(a).

¹² HRV made its "non-committee" status clear in a previous letter to the Commission, which is available at <http://query.nictusa.com/cgi-bin/fecimg/? 10030433063+0>.

¹³ Federal Election Comm'n, *Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees*, 59 Fed. Reg. 17267, 17268 (Apr. 12, 1994).

¹⁴ See 11 C.F.R. § 102.14(b)(3).

¹⁵ Complaint at 6.

¹⁶ The ad aired on September 1, 2010, more than 60 days before the 2010 general election, meaning that it was not an "electioneering communication." See 11 C.F.R. §§ 100.29, 110.11(a).

¹⁷ Harry Reid Votes, Radio Advertisement, available at <https://secure.campaignsolutions.com/harryreidvotes/donation2/?initiativekey=5LJO9VKXDYZX>.

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II. CONCLUSION

NSDP's complaint offered no grounds to conclude that HRV violated federal campaign finance laws. HRV never sponsored a "coordinated communication" and therefore never made an in-kind contribution to Sharron Angle's campaign. HRV's name is not prohibited by the Commission's rules in any way. And HRV's advertisement disclaimer contained information that allowed the public to readily identify HRV as the ad's sponsor. For all of the foregoing reasons, the Commission should find no reason to believe that a violation occurred and should dismiss this Matter.

Respectfully Submitted,



Matthew T. Sanderson
Caplin & Drysdale, Chartered

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STATEMENT OF DESIGNATION OF COUNSEL
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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/3/10
Date

Danny Tarkanian
Respondent-Agent-Signature

individual
Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: Danny Tarkanian

MAILING ADDRESS:
(Please Print)

Henderson, NV 89015

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BUSINESS ()

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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10-11

Date

Allison Van Over

Respondent/Agent -Signature

Treasurer

Title (Treasurer/Candidate/Owner)

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